

AMENDED IN ASSEMBLY MARCH 27, 1995

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL

No. 985

Introduced by Assembly Member Firestone

February 23, 1995

An act to amend Section ~~646.9~~ of 6254 of the Government Code, and to amend Section 646.9 of, and to add Section 646.92 to, the Penal Code, relating to stalking.

LEGISLATIVE COUNSEL'S DIGEST

AB 985, as amended, Firestone. Stalking.

~~Existing law provides that a person who willfully, maliciously, and repeatedly follows or harasses another person and makes a credible threat, as provided, is guilty of the crime of stalking.~~

~~This bill would provide instead that a person who willfully, maliciously, or repeatedly follows, harasses, or intimidates another person and makes a credible threat, as provided, is guilty of the crime of stalking. By expanding the scope of an existing crime, the bill would impose a state-mandated local program.~~

(1) Existing law provides that a person who willfully, maliciously, and repeatedly follows or harasses another person and makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family, is guilty of the crime of stalking.

This bill instead would provide that a person who willfully, maliciously, and repeatedly follows or harasses another person

and in so doing engages in a course of conduct that would cause a reasonable person to fear for his or her safety, or the safety of his or her immediate family, is guilty of the crime of stalking. By changing the definition of a crime, the bill would impose a state-mandated local program.

(2) Existing law authorizes a court to issue a restraining order against a defendant who has committed the offense of stalking and provides that the duration of the restraining order may be longer than 5 years only in an extreme case.

This bill would eliminate this restriction on the duration of the order.

(3) Existing law requires a sex offender to register with local law enforcement officials within 14 days of coming into a city, county, or city and county in which he or she temporarily resides or is domiciled for that length of time. Failure to register under these provisions is a crime.

This bill would authorize a court to order a person who is guilty of a felony violation of the offense of stalking to register under these provisions.

(4) The California Public Records Act prohibits state and local law enforcement agencies from disclosing specified information regarding the victim of certain crimes.

This bill additionally would prohibit the disclosure of information regarding the victim of the crimes of stalking or assault with intent to commit mayhem or a specified sex offense.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. *Section 6254 of the Government Code is*
2 *amended to read:*



1 6254. Except as provided in Section 6254.7, nothing in
2 this chapter shall be construed to require disclosure of
3 records that are any of the following:

4 (a) Preliminary drafts, notes, or interagency or
5 intra-agency memoranda which are not retained by the
6 public agency in the ordinary course of business,
7 provided that the public interest in withholding those
8 records clearly outweighs the public interest in
9 disclosure.

10 (b) Records pertaining to pending litigation to which
11 the public agency is a party, or to claims made pursuant
12 to Division 3.6 (commencing with Section 810), until the
13 pending litigation or claim has been finally adjudicated or
14 otherwise settled.

15 (c) Personnel, medical, or similar files, the disclosure
16 of which would constitute an unwarranted invasion of
17 personal privacy.

18 (d) Contained in or related to:

19 (1) Applications filed with any state agency
20 responsible for the regulation or supervision of the
21 issuance of securities or of financial institutions,
22 including, but not limited to, banks, savings and loan
23 associations, industrial loan companies, credit unions, and
24 insurance companies.

25 (2) Examination, operating, or condition reports
26 prepared by, on behalf of, or for the use of, any state
27 agency referred to in paragraph (1).

28 (3) Preliminary drafts, notes, or interagency or
29 intra-agency communications prepared by, on behalf of,
30 or for the use of, any state agency referred to in paragraph
31 (1).

32 (4) Information received in confidence by any state
33 agency referred to in paragraph (1).

34 (e) Geological and geophysical data, plant production
35 data, and similar information relating to utility systems
36 development, or market or crop reports, which are
37 obtained in confidence from any person.

38 (f) Records of complaints to, or investigations
39 conducted by, or records of intelligence information or
40 security procedures of, the office of the Attorney General



1 and the Department of Justice, and any state or local
2 police agency, or any investigatory or security files
3 compiled by any other state or local police agency, or any
4 investigatory or security files compiled by any other state
5 or local agency for correctional, law enforcement, or
6 licensing purposes, except that state and local law
7 enforcement agencies shall disclose the names and
8 addresses of persons involved in, or witnesses other than
9 confidential informants to, the incident, the description
10 of any property involved, the date, time, and location of
11 the incident, all diagrams, statements of the parties
12 involved in the incident, the statements of all witnesses,
13 other than confidential informants, to the victims of an
14 incident, or an authorized representative thereof, an
15 insurance carrier against which a claim has been or might
16 be made, and any person suffering bodily injury or
17 property damage or loss, as the result of the incident
18 caused by arson, burglary, fire, explosion, larceny,
19 robbery, carjacking, vandalism, vehicle theft, or a crime
20 as defined by subdivision (c) of Section 13960, unless the
21 disclosure would endanger the safety of a witness or other
22 person involved in the investigation, or unless disclosure
23 would endanger the successful completion of the
24 investigation or a related investigation. However,
25 nothing in this division shall require the disclosure of that
26 portion of those investigative files which reflect the
27 analysis or conclusions of the investigating officer.

28 Other provisions of this subdivision notwithstanding,
29 state and local law enforcement agencies shall make
30 public the following information, except to the extent
31 that disclosure of a particular item of information would
32 endanger the safety of a person involved in an
33 investigation or would endanger the successful
34 completion of the investigation or a related investigation:

35 (1) The full name, current address, and occupation of
36 every individual arrested by the agency, the individual's
37 physical description including date of birth, color of eyes
38 and hair, sex, height and weight, the time and date of
39 arrest, the time and date of booking, the location of the
40 arrest, the factual circumstances surrounding the arrest,



1 the amount of bail set, the time and manner of release or
2 the location where the individual is currently being held,
3 and all charges the individual is being held upon,
4 including any outstanding warrants from other
5 jurisdictions and parole or probation holds.

6 (2) Subject to the restrictions imposed by Section 841.5
7 of the Penal Code, the time, substance, and location of all
8 complaints or requests for assistance received by the
9 agency and the time and nature of the response thereto,
10 including, to the extent the information regarding crimes
11 alleged or committed or any other incident investigated
12 is recorded, the time, date, and location of occurrence,
13 the time and date of the report, the name, age, and
14 current address of the victim, except that the address of
15 the victim of any crime defined by Section 220, 261, 264,
16 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, ~~or~~
17 422.75, *or* 646.9 of the Penal Code shall not be disclosed,
18 the factual circumstances surrounding the crime or
19 incident, and a general description of any injuries,
20 property, or weapons involved. The name of a victim of
21 any crime defined by Section 220, 261, 264, 264.1, 273a,
22 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, ~~or~~ 422.75, *or*
23 646.9 of the Penal Code may be withheld at the victim's
24 request, or at the request of the victim's parent or
25 guardian if the victim is a minor. When a person is the
26 victim of more than one crime, information disclosing
27 that the person is a victim of a crime defined by Section
28 220, 261, 264, 264.1, 273a, 273d, 286, 288, 288a, 289, 422.6,
29 422.7, ~~or~~ 422.75, *or* 646.9 of the Penal Code may be deleted
30 at the request of the victim, or the victim's parent or
31 guardian if the victim is a minor, in making the report of
32 the crime, or of any crime or incident accompanying the
33 crime, available to the public in compliance with the
34 requirements of this paragraph.

35 (g) Test questions, scoring keys, and other
36 examination data used to administer a licensing
37 examination, examination for employment, or academic
38 examination, except as provided for in Chapter 3
39 (commencing with Section 99150) of Part 65 of the
40 Education Code.



1 (h) The contents of real estate appraisals or
2 engineering or feasibility estimates and evaluations made
3 for or by the state or local agency relative to the
4 acquisition of property, or to prospective public supply
5 and construction contracts, until all of the property has
6 been acquired or all of the contract agreement obtained.
7 However, the law of eminent domain shall not be affected
8 by this provision.

9 (i) Information required from any taxpayer in
10 connection with the collection of local taxes which is
11 received in confidence and the disclosure of the
12 information to other persons would result in unfair
13 competitive disadvantage to the person supplying the
14 information.

15 (j) Library circulation records kept for the purpose of
16 identifying the borrower of items available in libraries,
17 and library and museum materials made or acquired and
18 presented solely for reference or exhibition purposes.
19 The exemption in this subdivision shall not apply to
20 records of fines imposed on the borrowers.

21 (k) Records the disclosure of which is exempted or
22 prohibited pursuant to federal or state law, including, but
23 not limited to, provisions of the Evidence Code relating
24 to privilege.

25 (l) Correspondence of and to the Governor or
26 employees of the Governor's office or in the custody of or
27 maintained by the Governor's legal affairs secretary,
28 provided that public records shall not be transferred to
29 the custody of the Governor's legal affairs secretary to
30 evade the disclosure provisions of this chapter.

31 (m) In the custody of or maintained by the Legislative
32 Counsel, except those records in the public data base
33 maintained by the Legislative Counsel that are described
34 in Section 10248.

35 (n) Statements of personal worth or personal financial
36 data required by a licensing agency and filed by an
37 applicant with the licensing agency to establish his or her
38 personal qualification for the license, certificate, or
39 permit applied for.



1 (o) Financial data contained in applications for
2 financing under Division 27 (commencing with Section
3 44500) of the Health and Safety Code, where an
4 authorized officer of the California Pollution Control
5 Financing Authority determines that disclosure of the
6 financial data would be competitively injurious to the
7 applicant and the data is required in order to obtain
8 guarantees from the United States Small Business
9 Administration. The California Pollution Control
10 Financing Authority shall adopt rules for review of
11 individual requests for confidentiality under this section
12 and for making available to the public those portions of
13 an application which are subject to disclosure under this
14 chapter.

15 (p) Records of state agencies related to activities
16 governed by Chapter 10.3 (commencing with Section
17 3512) of Division 4 of Title 1, Chapter 10.5 (commencing
18 with Section 3525) of Division 4 of Title 1, and Chapter 12
19 (commencing with Section 3560) of Division 4 of Title 1,
20 which reveal a state agency's deliberative processes,
21 impressions, evaluations, opinions, recommendations,
22 meeting minutes, research, work products, theories, or
23 strategy, or which provide instruction, advice, or training
24 to employees who do not have full collective bargaining
25 and representation rights under the above chapters.
26 Nothing in this subdivision shall be construed to limit the
27 disclosure duties of a state agency with respect to any
28 other records relating to the activities governed by the
29 employee relations acts referred to in this subdivision.

30 (q) Records of state agencies related to activities
31 governed by Articles 2.6 (commencing with Section
32 14081), 2.8 (commencing with Section 14087.5), and 2.91
33 (commencing with Section 14089) of Chapter 7 of Part 3
34 of Division 9 of the Welfare and Institutions Code, which
35 reveal the special negotiator's deliberative processes,
36 discussions, communications, or any other portion of the
37 negotiations with providers of health care services,
38 impressions, opinions, recommendations, meeting
39 minutes, research, work product, theories, or strategy, or



1 which provide instruction, advice, or training to
2 employees.

3 Except for the portion of a contract containing the rates
4 of payment, contracts for inpatient services entered into
5 pursuant to these articles, on or after April 1, 1984, shall
6 be open to inspection one year after they are fully
7 executed. In the event that a contract for inpatient
8 services which is entered into prior to April 1, 1984, is
9 amended on or after April 1, 1984, the amendment,
10 except for any portion containing the rates of payment,
11 shall be open to inspection one year after it is fully
12 executed. If the California Medical Assistance
13 Commission enters into contracts with health care
14 providers for other than inpatient hospital services, those
15 contracts shall be open to inspection one year after they
16 are fully executed.

17 Three years after a contract or amendment is open to
18 inspection under this subdivision, the portion of the
19 contract or amendment containing the rates of payment
20 shall be open to inspection.

21 Notwithstanding any other provision of law, the entire
22 contract or amendment shall be open to inspection by the
23 Joint Legislative Audit Committee. The Joint Legislative
24 Audit Committee shall maintain the confidentiality of the
25 contracts and amendments until such time as a contract
26 or amendment is fully open to inspection by the public.

27 (r) Records of Native American graves, cemeteries,
28 and sacred places maintained by the Native American
29 Heritage Commission.

30 (s) A final accreditation report of the Joint
31 Commission on Accreditation of Hospitals which has
32 been transmitted to the State Department of Health
33 Services pursuant to subdivision (b) of Section 1282 of the
34 Health and Safety Code.

35 (t) Records of a local hospital district, formed pursuant
36 to Division 23 (commencing with Section 32000) of the
37 Health and Safety Code, or the records of a municipal
38 hospital, formed pursuant to Article 7 (commencing with
39 Section 37600) or Article 8 (commencing with Section
40 37650) of Chapter 5 of Division 3 of Title 4 of this code,



1 which relate to any contract with an insurer or nonprofit
2 hospital service plan for inpatient or outpatient services
3 for alternative rates pursuant to Section 10133 or 11512 of
4 the Insurance Code. However, the record shall be open
5 to inspection within one year after the contract is fully
6 executed.

7 (u) Information contained in applications for licenses
8 to carry firearms issued pursuant to Section 12050 of the
9 Penal Code by the sheriff of a county or the chief or other
10 head of a municipal police department which indicates
11 when or where the applicant is vulnerable to attack or
12 which concerns the applicant's medical or psychological
13 history or that of members of his or her family.

14 (v) (1) Records of the Major Risk Medical Insurance
15 Program related to activities governed by Part 6.3
16 (commencing with Section 12695), and Part 6.5
17 (commencing with Section 12700), of Division 2 of the
18 Insurance Code, and which reveal the deliberative
19 processes, discussions, communications, or any other
20 portion of the negotiations with health plans, or the
21 impressions, opinions, recommendations, meeting
22 minutes, research, work product, theories, or strategy of
23 the board or its staff, or records that provide instructions,
24 advice, or training to employees.

25 (2) (A) Except for the portion of a contract that
26 contains the rates of payment, contracts for health
27 coverage entered into pursuant to Part 6.3 (commencing
28 with Section 12695), or Part 6.5 (commencing with
29 Section 12700), of Division 2 of the Insurance Code, on or
30 after July 1, 1991, shall be open to inspection one year
31 after they have been fully executed.

32 (B) In the event that a contract for health coverage
33 that is entered into prior to July 1, 1991, is amended on or
34 after July 1, 1991, the amendment, except for any portion
35 containing the rates of payment, shall be open to
36 inspection one year after the amendment has been fully
37 executed.

38 (3) Three years after a contract or amendment is open
39 to inspection pursuant to this subdivision, the portion of



1 the contract or amendment containing the rates of
2 payment shall be open to inspection.

3 (4) Notwithstanding any other provision of law, the
4 entire contract or amendments to a contract shall be open
5 to inspection by the Joint Legislative Audit Committee.
6 The Joint Legislative Audit Committee shall maintain the
7 confidentiality of the contracts and amendments thereto,
8 until the contract or amendments to a contract is open to
9 inspection pursuant to paragraph (3).

10 (w) (1) Records of the Major Risk Medical Insurance
11 Program related to activities governed by Chapter 14
12 (commencing with Section 10700) of Part 2 of Division 2
13 of the Insurance Code, and that reveal the deliberative
14 processes, discussions, communications, or any other
15 portion of the negotiations with health plans, or the
16 impressions, opinions, recommendations, meeting
17 minutes, research, work product, theories, or strategy of
18 the board or its staff, or records that provide instructions,
19 advice, or training to employees.

20 (2) Except for the portion of a contract that contains
21 the rates of payment, contracts for health coverage
22 entered into pursuant to Chapter 14 (commencing with
23 Section 10700) of Part 2 of Division 2 of the Insurance
24 Code, on or after January 1, 1993, shall be open to
25 inspection one year after they have been fully executed.

26 (3) Notwithstanding any other provision of law, the
27 entire contract or amendments to a contract shall be open
28 to inspection by the Joint Legislative Audit Committee.
29 The Joint Legislative Audit Committee shall maintain the
30 confidentiality of the contracts and amendments thereto,
31 until the contract or amendments to a contract is open to
32 inspection pursuant to paragraph (2).

33 (x) Financial data contained in applications for
34 registration, or registration renewal, as a service
35 contractor filed with the Director of the Department of
36 Consumer Affairs pursuant to Chapter 20 (commencing
37 with Section 9800) of Division 3 of the Business and
38 Professions Code, for the purpose of establishing the
39 service contractor's net worth, or, financial data



1 regarding the funded accounts held in escrow for service
2 contracts held in force in this state by a service contractor.

3 Nothing in this section prevents any agency from
4 opening its records concerning the administration of the
5 agency to public inspection, unless disclosure is otherwise
6 prohibited by law.

7 Nothing in this section prevents any health facility from
8 disclosing to a certified bargaining agent relevant
9 financing information pursuant to Section 8 of the
10 National Labor Relations Act.

11 *SEC. 2.* Section 646.9 of the Penal Code is amended to
12 read:

13 646.9. (a) Any person who willfully, maliciously, ~~or~~
14 ~~repeatedly follows, harasses, or intimidates another~~
15 ~~person and who makes a credible threat with the intent~~
16 ~~to place that person in reasonable fear for his or her safety,~~
17 *and repeatedly follows or harasses another person, and in*
18 *so doing engages in a course of conduct that would cause*
19 *a reasonable person to fear for his or her safety,* or the
20 safety of his or her immediate family, is guilty of the crime
21 of stalking, punishable by imprisonment in a county jail
22 for not more than one year or by a fine of not more than
23 one thousand dollars (\$1,000), or by both that fine and
24 imprisonment, or by imprisonment in the state prison.

25 (b) Any person who violates subdivision (a) when
26 there is a temporary restraining order, injunction, or any
27 other court order in effect prohibiting the behavior
28 described in subdivision (a) against the same party, shall
29 be punished by imprisonment in the state prison for two,
30 three, or four years.

31 (c) Every person who, having been convicted of a
32 felony under this section, commits a second or subsequent
33 violation of this section shall be punished by
34 imprisonment in the state prison for two, three, or four
35 years.

36 (d) *In addition to the penalties provided in this*
37 *section, the sentencing court may order a person*
38 *convicted of a felony under this section to register as a sex*
39 *offender pursuant to subparagraph (E) of paragraph (2)*
40 *of subdivision (a) of Section 290. It is the intent of the*



1 Legislature that the finding of the sentencing court be
2 based upon the severity of the offense, whether or not the
3 offense is sexual in nature, and the probability of future
4 violations. The court shall state on the record the reasons
5 for its findings and the reasons for requiring registration.

6 (e) For the purposes of this section, “harasses” means
7 a knowing and willful course of ~~conduct~~ *action* directed
8 at a specific person that seriously alarms, annoys,
9 torments, or terrorizes the person, and that serves no
10 legitimate purpose. ~~The course of conduct~~ *This course of*
11 *action* must be such as would cause a reasonable person
12 to suffer substantial emotional distress, and must actually
13 cause substantial emotional distress to the person.
14 ~~Course~~ *The present incarceration of a person engaging*
15 *in the course of action is not a bar to prosecution under*
16 *this section.*

17 (f) For purposes of this section, “course of conduct”
18 means a pattern of conduct composed of a series of acts
19 over a period of time, however short, evidencing a
20 continuity of purpose. Constitutionally protected activity
21 is not included within the meaning of “course of
22 conduct.”

23 ~~(e) For the purposes of this section, “credible threat”~~
24 ~~means a verbal or written threat or a threat implied by a~~
25 ~~pattern of conduct or a combination of verbal or written~~
26 ~~statements and conduct made with the intent and the~~
27 ~~apparent ability to carry out the threat so as to cause the~~
28 ~~person who is the target of the threat to reasonably fear~~
29 ~~for his or her safety or the safety of his or her immediate~~
30 ~~family. The present incarceration of a person making the~~
31 ~~threat shall not be a bar to prosecution under this section.~~

32 ~~(f)~~

33 (g) This section shall not apply to conduct that occurs
34 during labor picketing.

35 ~~(g)~~

36 (h) If probation is granted, or the execution or
37 imposition of a sentence is suspended, for any person
38 convicted under this section, it shall be a condition of
39 probation that the person participate in counseling, as
40 designated by the court. However, the court, upon a



1 showing of good cause, may find that the counseling
2 requirement shall not be imposed.

3 ~~(h) The court shall also consider issuing an order~~

4 ~~(i) The sentencing court may issue an order~~
5 restraining the defendant from any contact with the
6 victim, that may be valid for up to 10 years, as determined
7 by the court. It is the intent of the Legislature that the
8 length of any restraining order be based upon the
9 seriousness of the facts before the court, the probability
10 of future violations, and the safety of the victim and his or
11 ~~her immediate family. The duration of the restraining~~
12 ~~order may be longer than five years only in an extreme~~
13 ~~case, where a longer duration is necessary to protect the~~
14 ~~safety of the victim or his or her immediate family.~~

15 ~~(i) her immediate family.~~

16 (j) For purposes of this section, “immediate family”
17 means any spouse, parent, child, any person related by
18 consanguinity or affinity within the second degree, or any
19 other person who regularly resides in the household, or
20 who, within the prior six months, regularly resided in the
21 household.

22 ~~(j)~~

23 (k) The court shall consider whether the defendant
24 would benefit from treatment pursuant to Section 2684.
25 If it is determined to be appropriate, the court shall
26 recommend that the Department of Corrections make a
27 certification as provided in Section 2684. Upon the
28 certification, the defendant shall be evaluated and
29 transferred to the appropriate hospital for treatment
30 pursuant to Section 2684.

31 ~~(k) (1)~~

32 *SEC. 3. Section 646.92 is added to the Penal Code, to*
33 *read:*

34 *646.92. (a) The Department of Corrections, county*
35 *sheriff, or director of the local department of corrections*
36 *shall give notice not less than 15 days prior to the release*
37 *from the state prison or a county jail of any person who*
38 *is convicted of violating ~~this section~~ Section 646.9 or*
39 *convicted of a felony offense involving domestic violence,*
40 *as defined in Section 6211 of the Family Code, to any*



1 person the court identifies as a victim of the offense, a
2 family member of the victim, or a witness to the offense
3 by telephone and certified mail at his or her last known
4 address, upon request. A victim, family member, or
5 witness shall keep the Department of Corrections or
6 county sheriff informed of his or her current mailing
7 address and telephone number to be entitled to receive
8 notice. A victim may designate another person for the
9 purpose of receiving notification. However, the duty to
10 keep the Department of Corrections or county sheriff
11 informed of a current mailing address and telephone
12 number shall remain with the victim.

13 ~~(2)~~

14 (b) All information relating to any person who
15 receives notice under this ~~subdivision~~ *section* shall
16 remain confidential and shall not be made available to the
17 person convicted of violating this section.

18 ~~(3) For purposes of this subdivision~~

19 (c) For purposes of this section, “release” includes a
20 release from the state prison or a county jail because time
21 has been served, a release from the state prison or a
22 county jail to parole or probation supervision, or an
23 escape from an institution or reentry facility.

24 ~~(4)~~

25 (d) The Department of Corrections or county sheriff
26 shall give notice of an escape from an institution or
27 reentry facility of any person convicted of violating ~~this~~
28 ~~section~~ *Section 646.9* or convicted of a felony offense
29 involving domestic violence, as defined in Section 6211 of
30 the Family Code, to the notice recipients described in
31 ~~paragraph (1) subdivision (a)~~.

32 ~~(5)~~

33 (e) Substantial compliance satisfies the notification
34 requirements of ~~paragraph (1) subdivision (a)~~.

35 ~~SEC. 2.~~

36 *SEC. 4.* No reimbursement is required by this act
37 pursuant to Section 6 of Article XIII B of the California
38 Constitution because the only costs that may be incurred
39 by a local agency or school district will be incurred
40 because this act creates a new crime or infraction,



1 eliminates a crime or infraction, or changes the penalty
2 for a crime or infraction, within the meaning of Section
3 17556 of the Government Code, or changes the definition
4 of a crime within the meaning of Section 6 of Article
5 XIII B of the California Constitution.

6 Notwithstanding Section 17580 of the Government
7 Code, unless otherwise specified, the provisions of this act
8 shall become operative on the same date that the act
9 takes effect pursuant to the California Constitution.

O

